THE COURT: Okay. Mr. Grossman. We're ready.
Q (By MR. GROSSMAN) Doctor, I've handed you what's been marked for identification purposes as AZ-008222, which is a public statement from the American Cancer Society from 1967.
(Defendant R.J. Reynolds' Exhibit AZ-008222 was marked for identification.)
Q (By MR. GROSSMAN) Have you seen this before?
A I don't think I've seen this before, no.
Q Okay. I won't deal with it any further then.
Let me try another one. This is statement from the Public Health Service, 1969, Five Ways to Reduce the Risks of Smoking.
Are you familiar with that document?
Oh, wait. Did I give you two copies there? Yeah.
A I think I've seen this one, but it's been quite a while ago.
Q Okay. I'd like to direct your attention, if I could, to the third page in here. Do you see the -- the statement that says, "Choose a cigarette with less tar and nicotine"?
A I do.
Q Do you recall seeing that the Public Health Service and other public health officials throughout the late '60s, '70s and later periods advised the public to try to choose a lower tar cigarette?
A Yes, of course.
Q Is this along the lines of what was typically said?
A Well, this is entirely consistent. And they go on to say one way to cut down on your smoking was to switch to a

cigarette with less tar and less nicotine. And then they talk about the tar and nicotine ratings.
And it's entirely consistent with some of the things I personally have seen, for example, advertisements from the Public Health Service on TV. They would say if you're going to smoke, smoke only half your cigarette, and it shows somebody putting out the cigarette halfway down. So I think there have been a number of messages all consistent with this.
Q Okay. Thank you, Doctor.
A Do you want this one?
Q Sure. Thanks.
THE CLERK: Counsel, is there -- did you identify that?
MR. GROSSMAN: Yes. AN-002478.
(Defendant R.J. Reynolds' Exhibit AN-002478 was marked for identification.)
Q (By MR. GROSSMAN) Doctor, you're familiar that some people -- let me go back.
In designing cigarettes with lower tar and nicotine, was Reynolds trying to do what the public health community was suggesting?
A Yes. Absolutely.
MR. GROSSMAN: Now, could we have -- I think the number the chart is 505 or 506, the demonstrative.
(Pause.)
MR. GROSSMAN: Could we have Demonstrative 505, please.
Q (By MR. GROSSMAN) You discussed earlier how Reynolds and others were able to reduce tar and nicotine and then you hit a wall; is that correct?

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

A That's right.
MR. GROSSMAN: Could we have 506, please.
Q (By MR. GROSSMAN) This perhaps shows it better. These are the sales weighted average tar and nicotine yields for 1954 to 1988?
A It does show it better. And, in fact, if that chart were extended through today, 2003, you'd find that the red and blue lines are essentially at the same level.
So it's flattened out. Smokers are not continuing to trade down to the very lowest tar yield cigarettes even though they have made substantial changes from the 38 milligram range down to about 12 today.
Q All right. Now -- now, Doctor, Mr. Paul in his questioning of you last week asked whether Reynolds designed lower tar cigarettes to meet consumer demand.
Do you recall that?
A Yes, I do.
Q And did you, in fact, try and meet some consumer demand with lower tar cigarettes?
A Yes, I think so. There certainly was demand from consumers for lower tar cigarettes, and in particular for better tasting lower tar cigarettes. And if you'll recall back, many of the advertising approaches for some of the low-tar cigarettes was low tar, great taste --
Q Yeah.
A -- to try to get people to accept those lower tar cigarettes as their usual brand.
Q But -- but as the numbers came down, as they continued to

fall, did Reynolds stop at that point, the market average, where the most money is, or did it continue to try to make lower tar cigarettes to see if it could convince the public to try and accept cigarettes with tar below one milligram of -- 10 milligrams or 12 milligrams?
A Well, no, we've continued to develop products with very, very low tar yields, ultra low tar and even lowest tar. And if you'll remember back in the '70s, the mid-70s or thereabouts, we introduced Now. And then in 1980, we brought that Now product down to a tar level so low that you could barely measure it, and you certainly couldn't measure it terribly reproducibly.
We've added another -- I mean, a series of other products in there, for example, Camel Ultra Lights, Winston Lights and Winston Ultra Lights, to build a portfolio of products over a range of tars to try to bring that average -- sales weighted average tar yield down.
Q So you've been not only responding to consumers but actually trying to goad consumers into these?
A I think it's been both, certainly.
Q And when you hit the wall, that was when you started developing Premier?
A We started developing Premier in about 1981 because we saw it becoming very difficult to continue down. And we thought a different design, like a tobacco heating design, would offer the ability to reduce risks and maybe deliver a taste characteristic that was acceptable to smokers, and then it had some other benefits as well.

Q All right. Now, you're familiar with the literature

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

suggesting that some people in the public health community have now changed their view and say that lower tar may be no safer or no different than full-flavor cigarettes?
A I'm aware of that.
Q Do you personally agree with that?
A Absolutely not. I don't agree. And the primary reason is, and many of the people who are making those arguments even acknowledge, that there is epidemiology that shows statistics, epidemiology that shows that lower tar cigarettes present less risk, and that smokers who smoke low tars have less risk of a number of diseases, particularly lung cancer.
Q On the other hand, can you guarantee that a lower tar cigarette reduces risk?
A I don't think we -- I can guarantee it as a scientist because every individual smokes differently. The group of smokers as a whole, I think it's clear from the statistics, there's less risk. But any individual may smoke, may compensate to a larger degree than others and, in fact, may have very little reduction in tar yield.
Q Is there any way to prove that one cigarette is safer than another?
A I don't know of a way to definitively prove that one cigarette is safer than another short of doing a 30-year prospective epidemiology study where everything is controlled and the group of -- let's take Eclipse for example -- the group of Eclipse smokers smoke only Eclipse for a 30-year period in a very controlled way.

Q Now, that would mean that you could never change the product over the 30-year period?
A The product would have to be stable over that 30-year period.
Q And the control group would have to smoke the same products if they were over the 30-year period?
A Only those products, yes.
Q Is there any way to set up such a test? First of all, is there, ethically, any way to set up such a test?
A I don't think there is, no.
Q All right. Doctor, in the absence of those tests, you use analogs?
A We use a number of -- a number of tests that lead us to conclude that Eclipse, for example, may present less risk of lung cancer. And those tests include a variety of chemical analyses on the smoke as well as an extensive array of biological measurements, and even measurements with humans.
Q And -- well, let's go quickly to the -- I want to move you quickly -- quickly to the area of causality which you testified about a lot.
A Sure.
Q Now, you were shown a Surgeon General's Report, 1989, page 48, a chart. Let's see if we can get it out.
MS. KESSLER: Can we get a copy of AS-35? The full --
THE CLERK: Something new today or something already --
MS. KESSLER: Something already --
MR. GROSSMAN: It was used -- okay. Here. Oh, thanks.
Q (By MR. GROSSMAN) Doctor, let me get to page 48 and

we'll look at a little chart.
You were shown this chart by Mr. Paul. Do you remember

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/gnjl0001

that?
A Sure, I do.
Q All right. This shows the rate increase in lung cancer rates that occurred over the period from 1930 to 1990?
A Well, I think the date actually stopped about '85, '86, thereabouts, but yes.
Q And, in fact, there was a tremendous increase in reported lung cancer rates during that period?
A That's right.
Q And that followed increases in the amounts of smoking; is that correct?
A Uh, particularly over the early portion of this, I think smoking incidence is actually declining in recent years, but yes, basically.
Q Decline in men since about 1954?
A Uh, I don't know exactly when, but I would say in that neighborhood.
Q And in women from some time later?
A Some time later, yes.
Q Now, there -- if you look at the line down here, that's the line of stomach cancer; is that correct? Showed a tremendous drop during the same period?
A Yeah. I believe it is stomach cancer, yes.
Q The fact that stomach cancer fell as smoking increased doesn't mean that smoking prevents against stomach cancer, does it?

A No, it doesn't mean that at all.
Q What it -- what it means is that a statistical relationship by itself in your mind doesn't prove cause and effect?
A That's right.
Q Doctor, did the 1964 Surgeon General's Report speak to this issue?
A Of causation? It certainly did.
Q I'd like to put on the board AS-000015, "Criteria for Judgment." Actually, it might be just easier to read it to you.
MR. PAUL: I'm sorry. Is this in evidence?
MR. GROSSMAN: Yes, it is.
MR. PAUL: Okay.
Q (By MR. GROSSMAN) The -- at page 20 -- could you follow this with me. At page 20, Doctor, did the Surgeon General's Report say the following: Statistical methods cannot establish proof of a causal relationship in an association; the causal significance of an association is a matter of judgment which goes beyond any statement of statistical probability?
A Yes. You read that exactly right.
Q Do you agree with that statement?
A I do agree with that statement, and that gets to what I've talked about in this courtroom about rigorous scientific proof of causation.
Q Now, under causality on that same page, it says: Various meanings and conceptions of the term "cause" were discussed vigorously in a number of meetings of the committee and its

subcommittees.
Do you see that?
A Yes.

http://legacy.library.ucsf.edu/tid/mnt07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/gnjl0001

Q Then on page 22 -- if you could give me that. Thank you.

On page 22 under "Criteria for Judgment" it says: It should be said at once, however -- let's see if I can -- it should be said at once, however, that no member of this committee uses the word "cause" in an absolute sense in the area of this study.

You've seen that, Doctor?

A Yes, I have.

Q Doctor, what does that mean to you?

A Again, it means that -- that the Surgeon General acknowledged -- even though the Surgeon General in '64 was saying that cigarette smoking causes lung cancer, the Surgeon General acknowledged that it didn't follow the scientifically rigorous form of establishing causation. And so I think that was really the essence of it.

Q Now, as a scientist and a cigarette designer and someone trying to reduce the risks of smoking, you said you'd still require strict scientific proof. Why is that?

A Because I think if -- and in particular, if a mechanism were found, and driving toward finding that mechanism, whether it's a genetic mechanism of say, for example, DNA adduct formation or whether it's a genetic mechanism of irritation that leads to tumor formation, knowing the mechanism will enable cigarette designers, biologists and toxicologists to

8876

actually make the kind of changes in a cigarette that will specifically reduce lung cancer rates. So knowing how it works will increase the probability of making safer cigarettes.

Q If you know how it works you can design for that eventuality?

A That's exactly right.

Q All right. Now, Doctor, you were shown a document called -- it was marked as PX -- Plaintiffs' Exhibit 41. And Mr. Paul referred you to some language on page 59.

The specific language in question was: Calculation has indicated that the known carcinogens and co-carcinogens in cigarette smoke can account, as Mr. Paul read it to you, for about 90 percent of the observed activity.

Do you recall that?

A I recall that, yes.

Q But that's not what Dr. Rodgman intended; is that correct?

A I don't believe so because, as I pointed out in the testimony, you'll see there's a small caret between the words "can" and "account," and over to the right-hand margin there's a caret drawn and it says "not." And I know Dr. Rodgman well, and that is his handwriting. So I think -- I think the term is "cannot account" for the observed carcinogenicity.

Q And what does that mean to you?

A What that means is that in all the chemical research that's been done on cigarette smoke at that time, and even today, we know a lot of things that are in cigarette smoke. We know of more than 5,000 compounds present. But even, though, with that knowledge and the known biological activity, the

8877

carcinogenic activity of those individual compounds, you add it together and it still can't account for the activity in mouse skin-painting studies.

Q Now, in fact, isn't it true with regard to benzpyrene

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

that you were asked about that the public health literature clearly shows -- in fact, didn't Dr. Wynder say many decades ago that the amount of benzpyrene in cigarettes cannot account for the mouse skin painting?

MR. PAUL: Your Honor, I'm going to object. It's hearsay.

THE COURT: Sustain.

Q (By MR. GROSSMAN) Doctor, are you familiar with any literature suggesting that -- in your capacity as a director of research and development at Reynolds and in your prior capacity as a scientist at Reynolds, have you reviewed the public health literature?

A Yes.

Q Why have you done so?

A Because it ties into cigarette design and our attempts to reduce the risks of smoking.

Q Now, have you reviewed the public health literature on benzpyrene?

A Oh, yes. Extensively.

Q Why?

A Because there are many theories, benzpyrene is one, and looking at the benzpyrene theory and how that may contribute to or even be the major reason for tumorigenicity of cigarette smoke is important as a cigarette designer.

Q And have you reviewed, among others, the works of Ernst Wynder in that field?

A Yes. He's published extensively.

Q And you've done that to help you in the design of cigarettes?

A That's right.

Q And in reviewing that literature to help you in the design of cigarettes, have you been on notice of what Dr. Wynder ultimately said following his mouse skin-painting studies as to whether benzpyrene could account for the results that he obtained?

A Yes, I do.

Q And what did he say?

A Well, actually, doctor -- Professor Wynder, remember, did perform one of the early successful mouse skin-painting studies. He spent a number of years trying to identify and quantitate benzpyrene in cigarette smoke and looking at other polycyclic aromatic hydrocarbons.

And then in the late '50s Professor Wynder did conclude that okay, now we know some of the polycyclics that are present, we know the level of benzpyrene that is present, and the amount of benzpyrene by itself is not sufficient to account for what I've observed, Professor Wynder has observed, in mouse skin-painting tumorigenicity studies.

And it was at that point that -- that a number of scientists, including Professor Wynder, starting looking at the phenol theory, the promotion theory that phenols in conjunction with benzpyrene may account for it.

Q As a last subject, because I want to give plaintiffs an opportunity to ask you some questions and I know you have to leave, I want to turn to the Crohn memo, the memo addressed to Max Crohn that plaintiffs covered, Invalidation of Some Reports in the Research Department.

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

Remember that?
A Yes, I do.
Q What was your reaction when you -- when was the first time you saw that document?
A I saw that first in litigation several years ago.
Q What was your reaction?
A Well, to make my reaction clear let me tell you how I interpret that document.
Q Okay.
A There are some statements in that document --
MR. PAUL: Your Honor, I think this -- I think we should wait for a question. I think it's nonresponsive.
THE COURT: Okay. We need a further question.
Q (By MR. GROSSMAN) How do you interpret the document? You give me all the questions.
A In reading that document there is some discussion about invalidating research and development reports, or even potentially rewriting certain reports. And invalidating reports -- and the suggestion in the memo was that some reports need to be invalidated because of some of the things that are said in those reports.
So when I first saw that several years ago in litigation, I got to tell you that I was totally shocked. I was shocked

8880

with the language and at least my interpretation of that, not knowing what really went on around that memo.
What this boils down to is -- is in invalidating a report, to me that essentially means taking it out of the R&D library. So what I did, because that totally shocked me and insensed me to a degree, is I went to my R&D library and I went through the dual ledger system.
I don't know whether you remember, back in some of the direct I was talking about the library having a dual ledger system. When the scientist goes to the library and says I need to write a report, the library assigns that scientist a report number and a proposed title and a few other pieces of information.
Then when the scientist writes the report, they take it back to the library and it actually is entered into a second handwritten ledger in ink, of course, in a second handwritten ledger. Okay. Here's the report. It's been received by the library. Here is the final title and some other information about it, including who the copies were given to and all that.
So there's a dual ledger system. I went back and examined that dual ledger system to see if there was evidence of any reports being removed from it or invalidate it.
(Cell phone rings.)
Q Excuse me one -- it's a nice melody.
(Pause.)
THE WITNESS: Then -- then what I did is I went back to the microfilms. And if you remember in the '60s, in the early to mid-60s we began microfilming documents because we needed to

8881

make sure that there was a copy in a safe location in a different building, different location.
So I went back and examined the microfilms, and I have seen no evidence that any of those documents on microfilm have been invalidated or changed. And, in fact, my conclusion from this very extensive investigation where I looked at many, many

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

documents in R&D on the microfilm is that those documents are there.
Q (By MR. GROSSMAN) Okay.
A So the bottom line is, those documents are there. They've not been taken out of the library. I can't explain what's in this memorandum. It made me, bluntly, mad when I first saw it to even think that somebody would suggest something like that, because in my R&D department and my experience in the R&D department over 25 years is scientists don't do that sort of thing.
Q And by the way, in fairness, is this document signed?
A It doesn't appear to be, no.
Q Is there any evidence that it was ever sent?
A I don't know.
Q Let's -- let me hand you, if I can, what's been marked as Defendant R.J. Reynolds' Exhibit 830.
MS. KESSLER: AS-830.
THE COURT ATTENDANT: Thank you.
(Defendant R.J. Reynolds' Exhibit AS-000830 was marked for identification.)
MR. GROSSMAN: AS-830.
Q (By MR. GROSSMAN) Are you familiar with that document,

8882

sir?
It's from a -- it's to a Mr. A.C. Hillman, dated July 3, 1967. Entitled: Safeguarding of R.J. Reynolds Tobacco Company, Research and Development Departments' Proprietary Information.
A I am familiar with this, yes.
Q Is that from the business records of R.J. Reynolds?
A Yes.
Q Is it one that you're familiar with in your job?
A Yes, it is actually.
MR. GROSSMAN: I'd offer this into evidence.
MR. PAUL: I've just seen this. It's about 30 pages long. Can I -- I'll look at it at the break.
THE COURT: We're going to take a short break, just five minutes or so. Please don't discuss the case. Five minutes.
(Recess.)
(The following proceedings were then had in open court outside the presence of the jury.)
THE COURT ATTENDANT: Please come to order.
THE COURT: Okay. We are going to finish this afternoon, no question about it, right?
MR. GROSSMAN: Absolutely.
THE COURT: Okay. What about tomorrow morning?
MR. GROSSMAN: Dr. Parisky will be back.
THE COURT: At what time?
MR. GORDON: Um --
MR. GROSSMAN: 10:00 o'clock.
MR. GORDON: I think he had -- he had requested, as I

8883

recall, that we try and start a little earlier. I didn't get the sense that 10:00 o'clock meant that he couldn't come. I guess -- I guess the question is without imposing on the Court how much before 10:00 could we start?
THE COURT: What's -- is he going to have limited time to testify?
MR. GORDON: Yes. I mean, he said he could spare an

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

hour, maybe a bit more, based on the coverage he had back at U.S.C. And I know he had said that starting at 10:00 might have been a problem. I can double-check that with him.

THE COURT: We'll start at 9:30. I think I can do that.

MR. GORDON: Okay.

THE COURT: Okay. Are we all set, Mr. Paul?

MR. PAUL: Your Honor, we have a problem with some exhibits that were double marked. It's no one's fault, but I was just trying to find one of the double-marked exhibits. I'm trying to speed the process so when I start we'll be ready to go, rather than to have to burden the Court.

Could I just take one quick look?

(Pause.)

THE COURT: Bring the jury in, please.

THE COURT: Okay. Mr. Grossman.

MR. GROSSMAN: Thank you, your Honor.

Q (By MR. GROSSMAN) At the break we had offered into evidence AS-830.

MR. PAUL: No objection.

THE COURT: Received.

(Defendant R.J. Reynolds' Exhibit AS-000830 was received

into evidence.)

Q (By MR. GROSSMAN) Dr. Townsend, do you have in front of you AS-830?

A Yes, I do.

Q I'd like to quickly put on the Elmo.

This was a document from 1967, sir?

A Yes.

Q It says: Due to the shortage of space and also for security reasons we have started to microfilm a number of items which are kept in permanent storage within this vault. The first items to be microfilmed are the white laboratory notebooks pages -- pages 1 through 100,0000. After microfilming, and the film has been returned, we hope to store the yellow duplicate copies of the notebooks in a safe and secure spot, creating thereby some badly needed free space.

And then it goes on: Following this microfilming of the first 100,000 pages -- it goes through the whole procedure; is that correct?

A Yes, that is correct.

Q And, Doctor, following that memo, on July 30, 1967 -- actually, even preceding that. Let me show you AN-1373.

(Defendant R.J. Reynolds' Exhibit AN-001373 was marked for identification.)

Q (By MR. GROSSMAN) Do you have a copy? It was given to you.

And that is a memo, is it not, from Frank Colby to Murray Senkus?

A Actually, it's a monthly research report. Every month

each division, including the library, provides a monthly report to management.

Q And this is another document from the files of R.J. Reynolds?

A Yes, it is.

Q And you're familiar with it from your work?

A Yes.

MR. GROSSMAN: We would offer it in evidence.

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

MR. PAUL: No objection.
THE COURT: Received.
(Defendant R.J. Reynolds' Exhibit AN-001373 was received into evidence.)
MR. GROSSMAN: This document indicates on page three that an additional microfilm reader-printer was obtained, principally for three reasons, to save space, the cost of obtaining photostatic copies of materials is increasing, and like other R&D departments, it's desirable to store duplicates of notebooks and report files in a location different from the original material?
A Yes.
Q Why is it important to store them in a location different from the original material?
A Well, because if you have them stored in two locations, if there were a fire or a flood or some other event that would destroy or somehow mess up those copies, you've got a back-up copy.
Q Now, let me show you what's been marked for identification purposes as ASP-34.

(Defendant R.J. Reynolds' Exhibit ASP-000034 was marked for identification.)
Q (By MR. GROSSMAN) This is a memo from August 2, 1967. Here you go.
Dr. Townsend, this is another memo from Reynolds' files?
A Yes.
Q You're familiar with it?
A Yes.
Q You've seen it in the course of your job?
A Yes.
MR. GROSSMAN: We'd offer it in evidence.
MR. PAUL: No objection.
THE COURT: Received.
(Defendant R.J. Reynolds' Exhibit ASP-000034 was received into evidence.)
Q (By MR. GROSSMAN) Turning to page four, in August 1967 Dr. Colby wrote: In the interest of security and for conserving space, a microfilm camera was obtained for microfilming notebooks, reports, pamphlets, etcetera. The microfilming of the notebooks has been started.
A That's right.
Q Is that correct?
A You read that right.
Q Okay. Now, let me show you ASP-35.
(Defendant R.J. Reynolds' Exhibit ASP-000035 was marked for identification.)
Q (By MR. GROSSMAN) And I'll put this on the Elmo after we establish it, if I can.

Is that another -- this is a document dated, October 19, 1967?
A That's right.
Q It's entitled, "Departmental Plans for Research Department as Related to Ten-Year Forecast"?
A That's correct, yes.
Q This is another document from Reynolds' files?
A It is.
Q You're familiar with it as being from Reynolds' files?

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/gnjl0001

A Yes.
Q You've seen it before?
A I have.
MR. GROSSMAN: We'd offer it in evidence.
MR. PAUL: No objection.
THE COURT: Received.
(Defendant R.J. Reynolds' Exhibit ASP-000035 was received into evidence.)
Q (By MR. GROSSMAN) All right. I'd like to put page 14 on the Elmo here.
Could you read this to the jury --
A Sure.
Q -- Doctor.
A Every experiment by members of Research and Development is recorded in duplicate in specially designed notebooks. After these experiments are incorporated and informal reports the notebook pages are referred to the Division -- meaning the library division -- for safekeeping. Current holdings of proprietary information are: Over 3,500 formal reports and

over 3,700 notebooks. These documents are indexed for easy retrieval.
In order to further safeguard these documents, all notebooks and reports are presently microfilmed for safe storage away from the Research and Product Development premises.
Q Has that always been the policy of Reynolds as long as you've been there?
A Yes. Absolutely.
Q Has it been the policy since 1967?
A Yes.
Q And, indeed, have you checked to see that the materials that might have been covered by that unsigned memo indeed exist?
A I personally checked in great detail, and the result of my investigation is those documents exist on microfilm, and they're all there.
Q Now, in the course of your 25 years at Reynolds, how many reports and laboratory notebooks have you seen?
A Oh, gosh. Thousands, of course.
Q And if -- if there were any real evidence to you of any destruction of any laboratory notebooks or anything of the kind, what would you do about it?
A What would I do about it as head of R&D?
Q Yeah.
A I would fire whoever did it, because that's totally unacceptable. And in a research and development environment one records everything you do and all the experiments, all the observations that are made, and those kind of -- those

documents and information are to be retained forever.
Q Is that why Reynolds has a dual ledger system?
A That's one reason, yes.
Q Is that why Reynolds maintains these microfilm files as well as the paper files?
A Yes, it is.
Q Doctor, over the years how many scientists have worked at the R&D department at Reynolds?
A Well, I can't give you an exact number, but it's certainly been thousands.

http://legacy.library.ucsf.edu/tid/mnt07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/gnjl0001

Q How many have worked on the design of cigarettes?
A Oh, certainly -- oh, hundreds and hundreds. Probably more than a thousand.
Q You said there were 13 millions of pages that were made -- that were at least for the plaintiffs to review in this case?
A Well, I think what I said was my best guess is about 13 million pages on the RJR website.
Q From thousands of scientists, including thousands who were involved -- or hundreds or thousands who were involved in the design of cigarettes?
A Yes.
Q One of those who designed cigarettes was not Claude Teague; is that correct?
A Claude Teague did not design cigarettes.
Q One of those who designed cigarettes was not Frank Colby; is that correct?
A Dr. Colby did not design cigarettes.

8890

Q And Dr. Rodgman did participate in the design of cigarettes, but he was just one man; is that correct?
A That's correct.
Q Doctor, have you been proud to work at Reynolds?
A Actually, I'm very proud. I've always been proud to work there, and I think probably the main -- well, there are several main reasons. One is because there are excellent scientists at Reynolds, it's a challenge, and I'm working with some of the best in science.
The second reason is because the challenge of developing safer cigarettes is certainly, I think, an important challenge. It's a -- as you can imagine, it's a very tough challenge, both intellectually as well as in practice. It requires a lot of hard work, a lot of -- a lot of investigations, a lot of doing the right thing. But if you're successful, then you've made a difference.
MR. GROSSMAN: I have no further questions. Thank you.
THE COURT: Mr. Barron.
MR. BARRON: I have no questions. Thank you, your Honor.
THE COURT: Mr. Paul.
MR. PAUL: Thank you, your Honor.

RECROSS-EXAMINATION

BY GARY M. PAUL, Attorney at Law, Counsel on behalf of the Plaintiffs:
Q Do you feel that as an executive vice-president that you have a corporate responsibility as well?
A I have a responsibility to my company in several functions, certainly.

8891

Q Do you believe your company should be straight forward with the American public and tell them the truth?
A I believe my company should be certainly responsible, open, and tell the truth. Absolutely.
Q And if your company misled the American public, that would be a violation of their corporate responsibility as you understand it?
A I personally would have a real hard time working at R.J. Reynolds if I believe my company misled the public. I don't think that that's been the case.
Q So the answer to my question would be yes, that would be

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

a violation of the corporate responsibility?
A I think that if my company misled the public, that would be a violation of R.J. Reynolds' responsibility, and I don't think that's happened.
Q Whether you think it happened or not, it would be a violation, correct?
MR. GROSSMAN: Your Honor, this is beyond the scope of redirect.
THE COURT: Overruled.
Q (By MR. PAUL) The answer to that would be "yes"?
A I'm sorry. Can you ask it again?
Q Okay. If your company misled the American public, that would be a violation of this corporate responsibility that you've just discussed with us; isn't that correct?
A I think the company -- basically, yes.
Q Thank you.
A I think the company has a responsibility to do a number

of things. I think if there were intentional misleading of the public, that would not be a responsible thing to do.
Q Okay. Do you believe that there is a responsibility on the part of the company to put out the safest product it can?
A I think there's -- in general, yes. I think there's a responsibility that R.J. Reynolds has, and in particular, Research and Development has, to do everything it can to reduce the risks of cigarettes. And we've done that. We've been successful in reducing the risks in a variety of products, and we're continuing to research other ways to reduce risks.
Q So my answer -- the answer to my question would be yes; is that correct?
A I said basically, yes.
Q Okay. Now, if they have that responsibility, that means that sometime -- well, let me go back a step.
As a designer sometimes you have to make the hard decision, right?
A That's a pretty general question. What do you mean?
Q Okay. Let's say you're designing a product and you say to yourself, this product that we're designing is unsafe.
MR. GROSSMAN: Your Honor, may we approach?
THE COURT: All right.
(The following bench conference was then had.)
MR. GROSSMAN: Your Honor, Counsel is putting forth a standard that's not a legal standard, that these are -- these are argumentative questions that don't go to the question -- to the instruction that the jury's going to be given.
THE COURT: Where are you going with all of this?

MR. PAUL: Where I'm going is he's talking about lower tars and we're doing these things to make cigarettes safer, and what he's telling us -- he's putting out cigarettes he knows are unsafe. I'm asking him as a designer whether he has a responsibility to do that or not do that.
MR. GROSSMAN: He says all cigarettes are unsafe.
THE COURT: Okay. The question?
MR. PAUL: The question is whether you can put out a safer product. It's not whether you can put out very unsafe products.
THE COURT: Asking him the questions in terms of responsibility --

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/gnjl0001

MR. PAUL: That's what I was doing.
THE COURT: It's argumentative.
MR. PAUL: Oh, I'm sorry?
THE COURT: It's argumentative.
MR. PAUL: He's a executive vice president of the company. I mean, he knows what corporate responsibility is. He's the guy who makes the call. I mean, he's an executive vice-president. If he were just a scientist, it would be a different question, but he's an executive.
MR. GROSSMAN: This doesn't relate to legal responsibility.
THE COURT: Sustained.
MR. PAUL: All right.
(Bench conference concluded.)
Q (By MR. PAUL) Let's talk about design criteria.
As a designer of a product -- I think we sort of touched

8894

on this before, but you have an obligation, do you not, as a designer to try to put out the safest product that you can? Correct?
MR. GROSSMAN: Your Honor, argumentative.
THE COURT: Sustain as to form.
Q (By MR. PAUL) As a designer, is one of the things that you do in designing is try to make the product as safe as possible?
A Given the available technology, yes, certainly.
Q Okay. And in doing that, you look at the various ways that it might not be safe, correct?
A We look at various reasons why cigarette smoking is a risk, different theories, and we try out those theories all in an attempt to reduce risk.
Q Okay. And in doing that you have decisions that you have to make as a designer, do I keep the product the way it is, discard this design and move to a different design, for example. As a designer you go through that kind of conceptual thinking. Would that be a true statement?
A Uh, that would be true. That's one example. You know, there are other examples, such as, the product stewardship, where we examine all the materials that we use to make sure that none of those individually increase the risks, and if we find that there's some reason that we think it might, then we take it out.
Q And in this design process that you have gone through at RJR, and we sort of talked about it again on -- bless you -- on redirect, there are products that you're involved in the design

8895

of or overseeing the design of that you know are unsafe, or to put it a different way, are not as safe as other products that you are designing and putting out to the public.
Would that be a true statement?
MR. BARRON: Your Honor, I hate to interrupt, but we've gone over this. I object to all this. It's been asked and answered. Cumulative.
THE COURT: Overruled at this point.
Q (By MR. PAUL) Isn't that true?
A Well, I think in general -- in a general sense the answer is yes. That is true.
Q Okay.
A I think that no cigarette is safe. I think I've made

http://legacy.library.ucsf.edu/tid/mnt07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

that very clear. I think the very low-tar cigarettes and the lights probably present less risk to smokers than do high-tar cigarettes.
Q As a designer and as a -- in the position that you're in, you could make the decision, could you not, to say we will not put out a full-flavor cigarette?
MR. GROSSMAN: Objection, your Honor.
THE COURT: What's the objection?
MR. GROSSMAN: Counsel is suggesting a legal standard, which is inappropriate.
THE COURT: Overruled. That's not the question.
Q (By MR. PAUL) Is that true?
A Well, I don't think I myself, by myself only, could make a decision like that.
Q Let me ask it in a different fashion.

8896

You could recommend that it not be put out because there are safer ways to do it, correct?
A Well, I think I can make a recommendation like that. I think the fact is that there are many products from my competitors out there over that range and the cigarettes are what they are. Our job is to reduce the risks in every category, including the full flavor category.
Q I understand that there -- other companies may do other things.
MR. GROSSMAN: Your Honor, may we approach?
THE COURT: Okay.
MR. PAUL: I'll withdraw that question --
THE COURT: All right.
MR. PAUL: -- and go at it in a different fashion.
Q (By MR. PAUL) I'm talking only about Reynolds.
MR. GROSSMAN: Your Honor, for the period -- okay.
THE COURT: Proceed.
MR. PAUL: I'm sorry?
MR. GROSSMAN: I'll wait for the question.
MR. PAUL: Okay.
Q (By MR. PAUL) As to Reynolds alone, have you ever recommended as head of cigarette design that Reynolds not make full flavor cigarettes because of the increased risk in those cigarettes?
MR. GROSSMAN: Your Honor, may we approach?
(The following bench conference was then had.)
MR. GROSSMAN: In addition to all of the reasons stated before, this man has been at Reynolds 25 years during the

8897

entire period of time it's the preempted period. Conflict preemption is established by Lorillard v. Reilly. It clearly establishes that cigarettes of all regular designs, if they're tobacco rolled in paper, are a legal product.
THE COURT: Okay. We addressed this issue in the limine motions. Overruled.
Go ahead.
MR. PAUL: Thank you, your Honor.
(Bench conference concluded.)
THE WITNESS: I'm sorry. Can you ask it again?
Q (By MR. PAUL) Sure.
Have you as head of design ever recommended to RJR, the people above you, that they not make the full flavor cigarette because of the increased risk that it carries for the consumer?

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

A No, I've not made that recommendation. But we have made recommendations that might reduce the risks of full flavor products.

MR. PAUL: Your Honor, I'm going to move to strike the last part as nonresponsive.

THE COURT: Denied. Next question.

Q (By MR. PAUL) Have you ever made a recommendation that the light cigarette not be made and sold to the public because it carries an increased risk over other products that you do make?

A No, I've never made that recommendation. Again, because we work to reduce the risks in all of the categories, including the lights.

Q Okay. You used a term with me before, and you went back

8898

on redirect about confusion. I want to go back to that subject just a little bit because of some of your testimony.

As to the subject of causation, whether cigarette smoking causes lung cancer, you're not confused on that issue, are you?

A I'm not confused, no.

Q Okay. And you -- you don't believe, I know what you've said about scientific -- the term that you used which now escapes me.

A Rigorous scientific evaluation and investigation.

Q Thank you.

But in talking to this jury, you agree the overwhelming evidence is that cigarette smoking causes lung cancer; isn't that true?

A I think I've made this very clear. I believe -- I believe that cigarette smoking presents clear, strong inherent risks for a bunch of diseases, and the proof of causation is not in hand. I think we're getting very close to it. And I even said my personal opinion is that I think it's more probable than not that science will prove that causation.

Q And I think I had read to you from another document about overwhelming scientific evidence, and you said that you agreed with that statement.

That is still your statement, is it not, that --

MR. GROSSMAN: Object to the form of the question.

THE COURT: The question hasn't been completed.

What's the question?

Q (By MR. PAUL) The overwhelming scientific evidence and consensus is that cigarette smoking causes lung cancer; is that

8899

correct?

A I think there's overwhelming consensus in the scientific community that cigarette smoking causes it. I think there is some evidence. I think it's not complete. I think the epidemiology certainly is extremely powerful and strong.

Q I want to read to you from Exhibit 1820.

MR. GROSSMAN: Objection, your Honor. May we approach?

THE COURT: Yes.

MR. GROSSMAN: This is the --

THE COURT: Please.

(The following bench conference was then had.)

MR. GROSSMAN: This is the Philip Morris magazine newspaper insert.

MR. PAUL: Right.

MR. GROSSMAN: And it's introduced only as against Philip

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/gnjl0001

Morris over our very, very, very vigorous objection saying that nobody was harmed in this case as much as Reynolds by this document. In fact, we moved for a mistrial on the basis of its admittance. To question this witness with that document would be absolutely an abuse of this proceeding.

MR. PAUL: Well, I've already asked him a question from it. The overwhelming evidence was --

THE COURT: Okay. You can ask him these questions, but don't use the document. It was introduced limited to RJR.

MR. GROSSMAN: To Philip Morris.

THE COURT: To Philip Morris.

MR. PAUL: You're correct. I'll --

MR. GROSSMAN: And if you could not display it in front

of the jury.

MR. PAUL: I cannot come up with the wording without looking at it. That's the problem. I won't display it to the jury.

THE COURT: Okay.

(Bench conference concluded.)

Q (By MR. PAUL) I want to ask you whether you would agree that smoking low tar or light cigarettes does not eliminate the health risk of smoking.

A Smoking low tar does not eliminate the health risks of smoking. There are no safe cigarettes.

Q Do you agree also that smokers of Reynolds' cigarettes should not assume that lower yielding brands are safe or are safer than full flavor brands?

A I think there is some evidence that -- in fact, there's pretty good evidence that smokers as a group who smoke low tar and ultra low tar products are presented with less risk. I do, however, believe that no individual smoker should assume that he or she necessarily is presented with that reduced risk.

Q The answer to my question is that you do not agree with that statement; is that correct?

MR. GROSSMAN: Objection to the form of the question.

THE COURT: Sustained.

Q (By MR. PAUL) I'm sorry. Well, you don't agree with that statement, sir?

A I don't agree with that statement as it's written. I made my statement which --

Q Okay.

A -- I think clarifies it.

Q And the Surgeon General has also talked about this subject of low-tar cigarettes and the fact that they may be no safer than full flavor cigarettes, correct?

A There's a number of people in the public literature who believe -- or have concluded --

MR. PAUL: I asked -- I'm going to move to strike.

Q (By MR. PAUL) I asked about the Surgeon General, sir.

THE COURT: Restate the question, if you'd like.

Just respond to the question, please.

THE WITNESS: Yes, your Honor.

Q (By MR. PAUL) It's correct, is it not, that the Surgeon General has also indicated that light cigarettes are no safer than full flavor cigarettes? Is that correct?

A I believe so, but not in exactly the language you've used.

Q Okay. You indicated to us when I -- when we were on

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

cross-examination that Reynolds had gone -- had developed low-tar cigarettes because the public demanded it.
Do you remember that?
A Yes.
Q Low-tar cigarettes came about because of the health scare that occurred in the late '60s, correct?
A Well, I would say it began much earlier than that, but I think the -- the understanding that cigarette smoke is a major risk drove the public health to recommend to people that lower tar cigarettes are probably better.
Q All right. And -- and -- so Reynolds moved to that position in response to the public's demand that they wanted

something that was safer, correct?
A I think Reynolds provided lower tar cigarettes because smokers wanted them. Many smokers wanted them because of what the public health community was telling them. I think some smokers wanted them because they were lighter. There were a variety of reasons. But certainly the public health community had a major, major impact on driving the low tar market.
Q Okay. And if the public learns -- well, if Reynolds were to say to the public, low-tar cigarettes are no --
MR. GROSSMAN: Preemption, your Honor.
MR. PAUL: I'm sorry?
MR. GROSSMAN: Move to strike the --
THE COURT: The question's not been asked yet. Restate the question, if you'd like.
MR. PAUL: Yes, your Honor.
Q (By MR. PAUL) Has Reynolds considered going to the public -- well, that's a bad question.
Has Reynolds ever issued a public statement that low-tar cigarettes smoked by the public that are Reynolds' cigarettes may be no safer than regular full flavor cigarettes?
MR. GROSSMAN: Objection, your Honor. Preemption.
THE COURT: Sustained; form.
Q (By MR. PAUL) Okay. Do you know of any public statement by Reynolds, public release by Reynolds on the subject of whether or not low-tar cigarettes are safer than full-flavored cigarettes?
MR. GROSSMAN: Same objection.
THE COURT: Approach the bench, please.

MR. PAUL: I'll move on to a different subject, your Honor.
THE COURT: All right. Okay.
Q (By MR. PAUL) You've mentioned earlier that -- and maybe I'm -- I may have written this down wrong, and I apologize if I did, that -- well, I'll just ask you.
Did you say that there's -- the biological testing didn't show any difference in the effect of low nitrosamines as opposed to high nitrosamine content?
A That's exactly right, and we've published that in a peer-reviewed journal called, "The Journal of Toxicology."
Q Okay. Were you -- in saying that were you indicating that nitrosamines are not dangerous?
A Absolutely not. And I think --
Q Okay.
A -- I think my testimony made it clear, that even if you can't prove it given the available methods, there may be other

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

biological methods that may ultimately show it, but we reduced it anyway because it's the right thing to do.
Q Okay. Okay. We talked -- you talked about -- you were asked a question about whether or not you can make someone smoke a cigarette differently. You can't make them take a different puff, or you don't have any control over that.
As a designer knowing that there is compensation, the item that you can control is tar, correct?
A We can control tar in any machine smoking method. We can control the tar yield from that cigarette.
Q Right. Okay. That is one area that you do have control

over, correct?
A Under machine smoking. And the point is, what we don't have control over is how a person actually smokes that cigarette.
Q You also have control over the amount of tar that's put out in every cigarette that you manufacture, correct?
A As measured by some laboratory method like the FTC method, yes.
Q Finally -- oh. No, I don't want to get into it.
MR. PAUL: If I might just have -- here it is.
Q (By MR. PAUL) You were showed -- you were shown a number of documents in response to what was marked -- or what was admitted as Exhibit 8004 -- not admitted, but we discussed as 8004. This was the memorandum that talked about the Project LF, the wider circumference cigarette.
Remember that?
A Yes. Sure.
Q You were shown a couple documents that talked about the target audience for the product, 18 to 34 year old males, I think. Also -- in a couple of the documents. In AZ-8920 and in AZ-8921. Do you remember that?
A I remember. I think there were three documents that we talked about.
Q Okay.
A Not counting the one that you showed me.
Q Yeah. I think there's a third one that also said 18 to 34 year old male -- it's V-E-R-I-L-E segment.
A These are marketing people.

Q I don't know whether that means virile or --
A I think that's what it means. That's what it's supposed to mean.
Q Okay. The difference in these documents, however, is in the one that we discussed. What it said is primarily 13 to 24 year old male Marlboro smokers.
Remember that?
A Yes.
Q Doctor, as a cigarette designer in charge of cigarette design at Philip Morris --
A R.J. Reynolds.
Q R.J. Reynolds. It's late in the day.
A But I'm proud of it.
Q It's late for you too, right?
...at R.J. Reynolds, have you ever done any analysis as to how many people may have died from using your products?
MR. GROSSMAN: Objection, your Honor.
THE COURT: What's the objection?

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

MR. GROSSMAN: Argumentative.
THE COURT: Overruled.
THE WITNESS: No, and I wouldn't know how to begin. You know, I've made it clear that I think cigarette smoking is a strong inherent risk. There's absolutely no question about it. But I wouldn't know how to begin that kind of analysis.
MR. PAUL: Thank you. That's all I have.
THE WITNESS; Thank you.
THE COURT: Mr. Grossman.
MR. GROSSMAN: Thank you, your Honor.

8906

FURTHER REDIRECT EXAMINATION

BY THEODORE M. GROSSMAN, Attorney at Law, Counsel on behalf of the Defendant R.J. Reynolds Tobacco Company:

Q Doctor, a couple of quick questions and we'll get you out of here.
You were asked a lot of questions about marketing different tar content cigarettes. When you started your testimony you told the jury that as -- as a designer at Reynolds you review what the government requires and what the government suggests to you?
A Yes.
Q And how does the government define cigarettes to be marketed to the public?
A The government's definition of a cigarette, is that what you're asking?
Q Yeah.
A The government's definition of a cigarette is actually very simple. Congress decided many years ago that a cigarette was tobacco rolled in paper.
Q And it was that that was decided as the legal product?
A That's correct.
Q Now, you offer a wide range of products that go well beyond the costs and -- and well below the tar of just rolling tobacco and paper?
A Well, of course. I think what I've talked about in the cigarette design, in particular the general reduction section, is how one designs a cigarette is actually very complex and complicated, particularly if you're trying to get to lower tar

8907

yields.
Q Now -- and you offer a range of products, just to say General Motors offers everything from a 2000-pound car to a Hummer, right?
A Yes.
Q That isn't to say that everything is equally safe in your view; is that correct?
A No. I think that's exactly right.
Q But where the public health community says the Hummer is a lot safer than the 2000-pound car, the public health community doesn't say that high-tar cigarettes are necessarily more dangerous than low tar or vice versa, correct?
A Right.
Q In fact, it's the public health community's view that all these efforts --
MR. PAUL: Your Honor, I'm going to object. This is leading and suggestive.
THE COURT: Sustain; form.
Q (By MR. GROSSMAN) It's your understanding the public

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

health community's view is that people simply shouldn't smoke, and that their choice of cigarettes will not materially affect their health; is that correct?
MR. PAUL: Your Honor, I'm sorry. Leading and suggestive.
THE COURT: Sustain; form.
Q (By MR. GROSSMAN) What's your understanding of the public health community's general view today as to selection of cigarettes?

8908

A The public health's view actually has changed over the last few years. The public's health view used to be cigarette smoking causes cancer; you should quit, and you should quit now. I'm sorry. Used to be that cigarette smoking causes cancer, and you should smoke lower tar products or quit.
Today, the public health community's opinion is you should quit; cessation is the only acceptable alternative; cigarette smoking causes cancer, and by the way those low-tar cigarettes are no different from a risk standpoint than the higher tar cigarettes.
Q Now, Larry Lucier didn't smoke low-tar cigarettes from Reynolds, right?
A Uh, everything I've heard, he smoked Winston full flavor.
Q 1962 to 1965 or six, right?
A That's my understanding.
Q Larry Lucier said that if -- if cigarettes were marketed as ultra low tar, he wouldn't even try them; is that correct?
MR. PAUL: Your Honor, I'm going to object. It's argumentative.
THE COURT: Sustained.
Q (By MR. GROSSMAN) There are some people -- in your experience, Doctor, are there some people in a free market who simply won't even try ultra low-tar cigarettes?
MR. PAUL: Same objection.
THE COURT: Overruled as to this question.
THE WITNESS: Yes, of course, there are.
Q (By MR. GROSSMAN) And as to those people, if you just marketed one cigarette, one brand of cigarettes or one style,

8909

they would just go to another cigarette?
A That's probably right.
Q Because there are plenty on the market?
A There certainly are. There are many styles on the market.
Q In fact, some are just tobacco rolled in paper?
A Some are, particularly from the small manufacturers.
MR. GROSSMAN: I have no further questions.
THE COURT: Mr. Barron.
MR. BARRON: I still have no questions.
THE COURT: Mr. Paul.

FURTHER RECROSS-EXAMINATION

BY GARY M. PAUL, Attorney at Law, Counsel on behalf of the Plaintiffs:
Q It's true that they might go someplace else, right?
A Uh, your --
Q To follow-up that last question.
A Smokers, if we didn't make full flavor cigarettes, they would go to my competition.
Q And that's a decision you would have to make, right?
A I assume so, yes.

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/gnjl0001

Q Whether you wanted to absorb that, right?
A Absorb that? You mean lose that business?
Q Yes, sir.
A Yes. Certainly.
Q You have to do that as a trade off, don't you?
MR. GROSSMAN: Objection, your Honor.
Q (By MR. PAUL) That's the trade off in your business, isn't it?

8910

MR. GROSSMAN: Objection, your Honor. May we approach?
THE COURT: No. Just what's the objection.
MR. GROSSMAN: Goes to the same thing that we discussed at sidebar. This is to create some legal standard that doesn't exist.
MR. PAUL: I'm not asking about a legal standard.
THE COURT: Overruled. Just ask. Overruled. Go ahead.
Q (By MR. PAUL) That's the corporate decision. You have to decide whether or not to give up that product with the knowledge of the risk of that product, correct?
A If you're asking me -- is it a corporate decision to give up that full-flavor cigarette business?
Q Whatever cigarette business.
A Well, I thought you were talking about full flavor, the higher tar cigarettes.
Q You take full flavor. We'll use that one for a second.
You have to make that decision. Do I give up that -- that -- that business with the realization that I may be saving some people's lives? That's the decision you have to make, right?
A No, I don't think that's exactly the decision. The decision is do I continue making full flavor cigarettes that pose higher risk, or do I lose that business, let those consumers go somewhere else, when in fact R.J. Reynolds is pioneers in reducing the risk, and we've actually reduced risk, even of full flavors, through many of the techniques that we've developed.
I think the total tar yield has come down dramatically

8911

over the years. We've made a major reduction in tar, and I believe that we've made a major reduction in risk over the years to all smokers. Our goal continues to be to reduce risks even for the higher tar products.
Q The answer to the question is that's the trade off, isn't it?
MR. GROSSMAN: Your Honor, objection.
MR. PAUL: I'll ask it -- I'll withdraw it.
Q (By MR. PAUL) That's the trade off that you make as -- in the business. Do I give that additional risk, or do I give up the business, right?
MR. GROSSMAN: Argumentative, your Honor.
THE COURT: Sustained.
Anything further?
MR. PAUL: No, your Honor.
THE COURT: Okay. Mr. Grossman.
Mr. Barron.
MR. BARRON: I still have no questions, your Honor. Thank you.
THE COURT: Mr. Grossman?

FURTHER REDIRECT EXAMINATION

http://legacy.library.ucsf.edu/tid/mnr07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

BY THEODORE M. GROSSMAN, Attorney at Law, Counsel on behalf of the Defendant R.J. Reynolds Tobacco Company:
Q Has the Federal Government ever come to you and said you should go out of the business of selling cigarettes?
MR. PAUL: Your Honor, this is argumentative.
MR. GROSSMAN: This is just responsive to your -- it's the only question I have.

8912

THE COURT: All right. Sustain at this point.
Anything further?
MR. PAUL: No, your Honor.
THE COURT: Okay. Okay. You can step down. Thank you.
THE WITNESS: Thank you, your Honor.
THE COURT: We're going to recess now. Tomorrow is Thursday, but we're going to try to start a little earlier.
Is that going to create a problem for anybody? If I say 9:30, is that a problem?
MR. PAUL: Your Honor -- I'm sorry. May we approach for just one moment?
THE COURT: Okay.
(The following bench conference was then had.)
MR. PAUL: Dr. Townsend is still under subpoena. I'm wondering what we do at this point. I haven't dismissed him, obviously.
THE COURT: You haven't.
MR. PAUL: And he's still under subpoena.
THE COURT: That's right.
MR. PAUL: So --
THE COURT: I'm --
MR. PAUL: Where do we go from here?
THE COURT: If you need him, we're going to have to address that issue. I'm not making an order that he stay here until you make that decision. Is that your request?
MR. PAUL: Well, I don't need him unless the issue arises on nonsuit. But I'm going to ask the Court that you order -- if not stay here, that he return at the Court's --

8913

MR. GROSSMAN: I'm ready to argue that.
THE COURT: Well, I'm going to let the jury go.
(Bench conference concluded.)
THE COURT: Is there going to -- does anyone have any, among the jurors, have any significant scheduling problems if we start at 9:30 rather than 10:00?
JUROR NINE: I have a vet appointment to get stitches taken out of my dog, and I made it for tomorrow since it's the late day. But I can probably go in earlier to see if they can squeeze him in earlier.
THE COURT: I'm going to ask you to return at 9:30. We'll just do the best we can. If you can't make it, then so be it. Okay?
JUROR NINE: I'll do my best.
THE COURT: Have a nice evening. Please don't discuss the case. 9:30 tomorrow.
(The following proceedings were then had in open court outside the presence of the jury.)
THE COURT: The jury's all gone.
Dr. Townsend. Dr. Townsend, Dr. Townsend, you have not been released. You're still subject to the jurisdiction of this Court. Apparently a subpoena has been served on you.

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

Whether or not you need to appear at some future point in time of the trial remains undecided at this point in time. But I just want to remind you that have this continuing responsibility. If there's a need for that, then I'll advise your counsel, and I'll expect your compliance.

Other than that, I think I've said as much as I need to

on this issue. Okay?

DR. TOWNSEND: Yes, your Honor.

THE COURT: All right. Thank you.

Mr. Paul.

MR. PAUL: Yes, your Honor.

I wanted to make one additional point, that I'm willing to -- that he can return at this point. He just would necessarily have to be subject to recall. That's all I wanted.

THE COURT: Okay. That's part of the order.

MR. PAUL: Okay.

THE COURT: All right.

MR. GROSSMAN: Well, my understanding, your Honor -- we've objected. We moved to quash. My understanding is --

THE COURT: I denied that request.

MR. GROSSMAN: Okay.

MR. BARRON: But for clarification to both sides. He's not required to physically remain within Sacramento County. He can return to whenever he wants to return to.

MR. GROSSMAN: Yes.

MR. PAUL: That's what I was trying to say.

THE COURT: That's right.

MR. PAUL: Okay.

THE COURT: That is what I was trying to imply, perhaps not as clearly as I might have.

MR. PAUL: I appreciate that, your Honor.

And I was just trying to make it clear that that's what I was suggesting, that he could return, but just as long as he's subjected to recall.

THE COURT: Right.

MR. GROSSMAN: Your Honor, we have additional grounds that Mr. Geise --

MR. GEISE: Your Honor, real quick.

We object to the legality of the subpoena under Section 1989. A witness is not obliged to attend unless the witness is a resident within the state at the time of the service.

Dr. Townsend has never been a resident of California. There's clear law that says even if the subpoena is served while he's physically present in California, it doesn't apply.

THE COURT: Okay.

MR. GEISE: So for the record, we just want to preserve our issues with the subpoena. There were no witness fees tendered, no travel fees tendered.

THE COURT: Your objections are preserved. As I indicated before, we'll address this issue if we need to.

My comments when the doctor was here as a witness were intended to continue in effect whatever legal responsibilities he has as a result of his testimony and as a result of the service of subpoena by Mr. Paul or his agent during the trial.

MR. GEISE: If any.

MR. PAUL: Well, I'll make it clear. I never dismissed him. He has not been dismissed.

http://legacy.library.ucsf.edu/tid/mnf07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/gnjl0001

THE COURT: Okay. And that was the effect of -- the import of what I did, so he's on notice about that.

MR. GROSSMAN: He is on notice, your Honor.

THE COURT: Hopefully, we won't have to address that issue in less pleasant circumstances.

Okay. See you tomorrow in the morning at 9:30.

(Evening recess.)

---oOo---

http://legacy.library.ucsf.edu/tid/mnt07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/gnjl0001